Service Date: January 27, 1983

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, INC., GENERAL TELEPHONE OF THE NORTHWEST, INC., and NORTHWESTERN TELEPHONE SYSTEMS, INC. To Adopt Certain Depreciation Changes And Certain Changes Pertaining to Station Connections and Inside Wiring, AND IN THE MATTER of the Commission's Investigation Into Detariffing Customer Premises Equipment	)	UTILITY DIVISION DOCKET NO. 82.6.37 ORDER NO. 4951c

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BEFORE:

THOMAS J. SCHNEIDER, Commissioner
JOHN B. DRISCOLL, Commissioner
HOWARD L. ELLIS, Commissioner
CLYDE JARVIS, Commissioner

FINDINGS OF FACT

PART A

BACKGROUND

1. On June 8, 1982, the Commission initiated Docket No. 82.6.37 for purposes of investigating revisions to the provision of station connections/inside wiring, the deregulation of CPE, and the represcription of depreciation rates.

2. On December 30, 1982, the Commission issued Order No. 4951b setting forth its Findings of Fact and Order with respect to inside wiring and CPE.

3. On January 10, 1983, Mountain States Telephone and Telegraph Co. (MBT) and Northwestern Telephone Systems, Inc. (NWTS) filed Motions for Reconsideration of Order No. 4951b. On January 12, 1983, General Telephone of the Northwest, Inc., (GTNW) filed a Motion for Reconsideration.

4. This Order provides the Commission's Findings of Facts and Order upon reconsideration of Order No. 4951b.

PART B

FULLY SEPARATE SUBSIDIARIES (FSS)

5. Order No. 4951b requires NWTS and GTNW "to establish a FSS prior to entering into deregulated CPE operations" effective January 1, 1983. (Finding No. 13 and Order Paragraph No.2). The Commission cites two findings in support of the Order: (1) both GTNW and NWTS are affiliated with a corporate structure that features existing deregulated CPE operations in Montana and (2) the practical (and theoretical) inability to arrive at allocations of common operating costs between regulated (utility) and deregulated (nonutility) operations inevitably results in crosssubsidies. (Finding Nos. 12 & 13).

6. Order No. 4951b also requires FSS entities for purposes of GTNW and NWTS deregulated wiring operations.[1] The Order, however, provides a transitionary period which allows deregulated wiring on a fully compensatory time and materials (T&M) basis through calendar year 1983. The transitionary period was intended to mitigate potential work force and service-related disruption. (Finding No. 28 and Order Paragraph No. 4).

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[1] It should be pointed out that MBT is not exempt from the FSS requirement. The FCC requires a FSS for CPE and the Commission, of Finding No. 29, requires an FSS for wiring, as well.

7. The GTNW and NWTS Motions request that the Commission reverse its FSS requirement. The arguments offered in support of the request fall into two areas.

(1) It is likely that a FSS is not economically feasible and therefore will not be established. The resulting absence of GTNW and NWTS deregulated CPE and wiring operations will result in work force disruptions, less repair capacity, and a decrease in service provided to the utilities' predominantly rural service areas

(2) The FCC, after "careful economic analysis," found that (a) only AT&T was dominant to the degree a FSS was required, (b) GTNW's fully separated accounting procedure provides an adequate separation, and (c) the potential cost of undetected subsidy was "outweighted" by "other public considerations." The available alternative to a FSS, fully separated accounting, "provides ample opportunity for regulatory scrutiny." In the case of GTNW, the accounting treatment proposed has won the endorsement of the FCC, the Oregon Public Utility Commissioner, and the Montana Consumer Counsel witness Mr. Buckalew. Lastly, NWTS argues that common cost allocations are "an everyday necessity in the regulatory area" and the Commission's FSS requirement "assumes an intent to cross-subsidize and a complete regulatory disability to contend with the situation." (GTNW Motion pp. 2-6, 11-13; NWTS Motion pp. 2-5,7).

8. The Commission finds that the NWTS and GTNW arguments regarding the feasibility of establishing FSS entities and the resulting service-void are not particularly relevant, unpersuasive, and in direct contrast to the thrust of the FCC's Computer II findings. The FCC found that "market place forces will ensure that ample CPE is available for everyone. Our obligation in this area is to insure that carrier's unregulated activities remain divorced from its public utility services." (Docket No. 20828, Memorandum Opinion and Order on Further Reconsideration, Finding No. 37). If the deregulated CPE and inside wiring operations are as unprofitable as GTNW (pp.5-6) and NWTS (pp. 3-4) maintain, then it is not clear why either utility would even desire to enter those markets--with or without a FSS. Regardless of the GTNW and NWTS FSS decisions, it is unlikely that there will be a service-void. The FCC found that "even the most remote residential users have access to CPE from other than local carriers. Today, customers can order CPE from mail order catalogues.... so far, some 3,500 models of terminal equipment have been registered by over 400 manufacturers. Approximately 952 versions of telephone sets are currently registered by about 132 non-Bell manufacturers..." (Ibid Footnotes No. 16 and 22.)

9. The Commission finds the second argument preferred by the GTNW and NWTS motions--that the Commissions FSS Order is based on faulty reasoning and mistakenly overlooks the “uncontroverted” evidence in support of the fully separated accounting Alternative – equally unpersuasive. GTNW, specifically, cites the endorsing testimony of both the FCC and Mr. Buckalew. The cited testimony (See pp. 2-3), however, reveals that the FCC endorsement is on a "short interim" basis, only, and the MCC endorsement is only as a "next best alternative" to a FSS. GTNW's recommendation that the Commission follow the FCC's "careful economic analysis" lacks merit. The FCC recognizes the prerogative of the states to arrive at an alternative to their "short interim" solution:

"What constitutes protection for the federal ratepayer may or may not provide adequate protection for state ratepayers. Some states may wish to impose additional safeguard to protest their citizens...where [the FCC] has not required separation, regulatory tools such as accounting requirements and structural separation are available to the states in meeting their legitimate regulatory interests in insuring that an intrastate carrier's participation in unregulated activities is not at the expense of the communication ratepayer." (Ibid, Finding Nos. 83, 86.)

10. Lastly, the Commission rejects the utilities’ “ample opportunity" and "everyday necessity" arguments in that they lack substance. Neither GTNW nor NWTS provide

support to the arguments, while the evidence on record suggests otherwise. Despite the fact that the Procedural Order (June 8, 1982) explicitly "requests that NWTS...address...how should accounting be maintained for sales of new CPE?" the record fails to establish whether NWTS has, to this day, even contemplated a separated accounting procedure. This fact [2] lends credence to NWTS's assertion that Order No. 4951b "assumes… a complete regulatory disability to contend with the situation" and, furthermore, supports the Commission's FSS requirement which eliminates "the situation" entirely.

11. Upon reconsideration of the FSS requirement found in Order No. 4951b, the Commission denies the GTNW and NWTS motions to revise the original Order. However, upon reconsideration, the Commission finds that the January 1, 1983, date does not provide reasonable opportunity for (1) GTNW and NWTS to form FSS entities, should they so choose, (2) the market force entry of competitive suppliers, and (3) the customer education required prior to removing CPE and wiring from public utility operations.

12. The Commission finds that the calendar year 1983 transitionary period provided in Order No. 4951b for deregulated wiring activities shall be extended to deregulated CPE activities. This finding requires the development, submittal and approval of a NWTS accounting mechanism for purposes of the 1983 transitionary period. For this purpose, the accounting treatment proposed by GTNW is accepted and can be utilized by NWTS. In lieu of the GTNW accounting proposal, NWTS must file its proposed accounting treatment within 45 days of the issuance of this Order. On

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[2] Also see discussion re: Unauthorized expensing of station connections and implied detariffing of CPE at Finding Nos. 22 & 25, Order No. 4951b.

January 1, 1984, deregulated nonutility operations will be prohibited except through the auspices of FSS corporate structures.

PART C

BIG SIX EMBEDDED CPE SALE PLAN

13. Order No. 4951b provides an embedded Big Six CPE sale plan (Finding Nos. 15-19) and Orders the three utilities to file complying plans within 30 days of the issuance of Order No. 4951b (Order Paragraph No. 1).

14. The sale plan features three options—return, continued lease, and sale—for simple single line embedded telephone instruments (Big Six) and handicapped enhancements to the Big Six. The sale was to commence on March 1, 1983, and feature a flash cut transfer of title. By default, the customer would purchase in-place sets at average net book value plus cost of sale through ten equal monthly payments reflecting 14.5% interest. The customer could affirmatively choose a one time payment or the alternative lease or return options. Inventory sets would be sold at market value. Lastly, the Commission directed the utilities to develop a tracking procedure for accounting costs and revenues associated with the Big Six sale plan.

15. Both MBT and NWTS request the Commission to reconsider certain portions of the sale plan provided for in Order No. 4951b. MBT attacks the legality of the default sale and/or the default installment as violative of numerous State, Federal, and administrative laws. (See MBT Motion pp. 2-8.) The default sale, MBT contends, also lacks any evidentiary support, exceeds the Commission's authority, and places an undue burden on both the customers and the Company. (See MBT Motion pp. 8-14.)

16. Both MBT and NWTS contend that the March 1, 1983 implementation date provided in Order No. 4951b is unreasonable in that it fails to (1) recognize billing cycle lags, (2) allow sufficient time for customers to make rational decisions, and (3) recognize the need for clarification provided for in this Order.

17. The utilities further argue that the warranties provided for in Order No. 4951b -- 180 days on inventory and 90 days on in-place -- are excessive: MBT requests the Commission specify the "handicapped enhancements;" and, finally, NWTS comments that the average book value of in-place sets is not less than that of inventory sets as implied in the Order.

18. The Commission finds persuasive the legal-impediment argument proffered by MBT and, therefore, revises the default option from sale to continued lease.[3] The Commission would also agree that the March 1 implementation date is no longer possible and, therefore, defers the implementation date to May 1, 1983. Proposed sale plans including costs and rates must be filed within 30 days of the issuance of this Order. This filing shall

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[3] Note that Order No. 4951b does not deregulate embedded Big Six CPE including handicapped enhancements. Lease rates are to remain tariffed and the leased embedded Big Six CPE is to remain utility property.

include detailed working papers setting forth the calculations in support of the proposed prices.

19. The Commission finds merit in directly linking warranties to the manufacturer's warranties and revises the warranties provided in Order No. 4951b downward to 90 days for both inventory and in--place CPE.

20. With respect to prices, the Commission revises the ten-month installment as follows. On and after May 1, 1983, the customer shall have three payment options for purchasing embedded Big Six CPE: (1) one time payment, (2) four-month installment with no interest charges, or (3) a twelve-month installment with 14.5% interest charges. As specified in Order No. 4951b, the sales prices are to reflect average book value plus cost of sale for in-place sets. Inventories are to be sold at market value, whether they are included in the average book value calculation (ie. NWTS' cradle-to-the-grave accounting) or not. It should also be pointed out that various calculations indicate a sub- stantial difference in transaction cost of sale between in-place and inventory sets. It is this difference in cost that gives rise to a point overlooked in Order No. 4951b: before a set can be considered in-place, it must have been leased for not less than 90 days.

21. Finally, the Commission denies the MBT request to elaborate on which handicapped enhancements are included with the embedded Big Six CPE. MBT should be fully capable of assessing the necessity of various single line set enhancements for purposes of providing a telephone lifeline to handicapped subscribers.

PART D

DEREGULATION OF EMBEDDED NON-BIG SIX CPE & COMPLEX WIRING

22. Order No. 4951b deregulates the GTNW and NWTS embedded Non Big Six CPE operations effective March 1, 1983 (Finding No.23). NWTS contends that the Order is unnecessarily vague and requests the Commission elaborate on how it intends to treat detariffed CPE for ratemaking purposes. GTNW also requests elaboration: Specifically, (1) does the order direct an above-the-line to a below-the-line transfer of embedded Non Big Six CPE? (2) if so, at book value or at market value?

23. GTNW further argues that the below-the-line transfer is confiscatory, exceeds the Commission's authority, lacks evidentiary support, is premature pending the FCC's anticipated Computer II Implementation order, and, in the case of complex wiring, has been pre-empted by the FCC. GTNW contends that the CPE operations have been conducted under regulated rates, capital recovery, and obligation-to-serve and, therefore, should feature a regulated disposal of any stranded investment.

24. Finally, both GTNW and NWTS contend that the Commission has misconstrued the extent to which the "management prerogative" principle set forth by both utilities is to be applied to the disposal of embedded CPE.[4]

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[4] NWTS's contention that Finding No. 22 fails to establish the Big Six/Other CPE dichotomy is in error. The dichotomy is established in Finding Nos. 14-15, not Finding No.22.

25. The Commission finds the GTNW Motions unpersuasive. Both utilities have had ample opportunity in a regulated tariff arena, to represcribe depreciation rates and establish lease rates at a fully compensatory level. Furthermore, Finding Nos.22 and 23 explicitly establish (1) the utilities desire to dispose of embedded CPE on a management prerogative basis, not on a regulated basis and (2) the Commission's position which "anticipates no further ratemaking treatment with respect to the March 1, 1983, deregulation of Non Big Six embedded CPE."

26. Upon reconsideration of Order No. 4951b, the Commission denies the GTNW and NWTS motions with respect to the deregulation of Non Big Six embedded CPE. The Commission, however, does find that the deregulation date should be extended to May 1, 1983, to allow for a simultaneous implementation with the Big Six sale plan. The Commission also finds that Order No. 4951b, or this Order, do not preclude the utilities from bringing special exemption requests to the Commission such as may be necessary as a result of the FCC's amortization of complex wiring accounts.

PART E

NEW & EMBEDDED SIMPLE WIRING RATES

27. Order No. 4951b allows for transitionary-detariffed new simple wiring on a fully compensatory T&M basis. (Finding Nos. 28-29.) For MBT, only, the Order provides a T&M option for maintenance of embedded wiring (Finding No. 36). In the case of the former, MBT had proposed to continue using the existing noncompensatory tariffed premise wiring service charge element. MBT's proposed optional maintenance charge was on an average per occurrence basis.

28. MBT's Motion requests that the Commission reverse its decision and allow new wiring and embedded maintenance as proposed by MBT. The Company argues that the

development of the T&M charges is complex and will not be completed until mid-1983 (MBT, p. 18).

29. The Commission finds the MBT motion unpersuasive. MBT fails to establish how the development of T&M charges could possibly be more complex than the development of average rates which reflect an average of T&M cost occurrence. The Commission is further troubled by the MBT proposal which leaves competitors, operating on a fully compensatory T&M basis, at a competitive disadvantage with MBT (through the transitionary period only) who would propose to offer noncompensatory average charges. Lastly, the Company has developed and proposed, and the Commission has accepted (Finding No. 40) T&M charges for complex wiring. The Commission has merely extended these charges to simple wiring as well.

30. Order No. 4951b directs the Company to implement the wiring provisions in conjunction with Docket No. 82.11.73. [5]

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[5] Docket No. 82.11.73 pertains to the Rural Telephone Improvement Program and will require the filing of revised rates in early-1983.

The Commission maintains that such filing date leaves ample opportunity for MBT to make necessary administrative changes for implementation of T&M charges. In the interim, the Company is authorized to utilize existing wiring rate structures.

PART F

PARTY LINE REGISTRATION RULES

31. Order No. 4951b directs the utilities to file, within 30 days, "proposed tariff sheets delineating rules and regulations for the interconnection of deregulated CPE to party-line access." (Finding No. 43).

32. Both NWTS and MBT request an extension to the 30 day filing period. NWTS further requests that the Commission provide more elaborate direction.

33. Prior to responding to the NWTS and MBT Motions, the Commission wishes to clarify the situation. The utilities' communication with the staff and the press [6] indicate that the utilities maintain a reluctance to accept the fact that there is no prohibition on customer provided CPE for purposes of party-line access. The Commission would point out the following facts: (l) the Part 68 Registration rules do not prohibit customer provided party line CPE and (2) Computer II does not exempt party line CPE from deregulation. With respect to party-line CPE, the FCC has made its position clear:

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[6] See Billings Gazette, January l9, 1983, p. 10-A.

> Under Computer II, party line CPE is deregulated along with other CPE. Therefore, Party Line terminal equipment that is on customers' premises or in inventory before January 1, 1983 is embedded CPE. Any party line telephones acquired by the telephone company and not included in regulated accounts on or after January 1, 1983, for provision to customers is new CPE and must be offered on an unregulated basis.
>
> Although party line telephones will be deregulated on January 1, 1983, they are not included in the Commission's equipment registration program, the guidelines for which are set forth in Part 68 of the Commission's Rules. Consequently, there are no specific technical and procedural regulations applicable to party line CPE. If a subscriber wishes to purchase his own party line telephone from a vendor, the telephone company should cooperate with that subscriber either on an ad hoc basis, subject to state regulatory supervision, or through tariff provisions that set forth the conditions for party line equipment interconnection. Computer II does not require telephone companies to modify terminal equipment to make it compatible with party line service. However, Computer II would permit a telephone company to charge a reasonable fee under tariff to make the necessary alternations to new CPE to permit selective ringing and calling party number identification. Similarly, Computer II would also permit a telephone company to sell embedded party line CPE, subject to state regulatory approval. (FCC Public Notice: December 10, 1982; pp. 3-4.)

34. Order No. 4951b follows the procedure explicitly set forth by the FCC. The Order requires the submittal of "tariff provisions that set forth the conditions for party line equipment interconnection." The Order also requires the utilities to file a proposed "reasonable fee under tariff to make the necessary alternations to new CPE to permit selective ringing and calling party number identification."

35. The Commission grants the request to extend the filing date. The proposed rules shall be filed within 45 days of the Issuance of this Order. This will allow the rules to be made effective prior to the May 1, 1983 implementation of the Big Six sale plan. In the interim, the utilities must “cooperate with the subscriber on…an ad hoc basis, subject to state regulatory supervision."

CONCLUSIONS OF LAW

1. Mountain States Telephone and Telegraph Company, Inc., General Telephone of the Northwest, Inc., and the Northwestern Telephone Systems, Inc., are corporations providing telephone and other communciations services within the state of Montana and as such are "public utilities" within the meaning of MCA §69-3-101.

2. The Montana Public Service Commission properly exercises jurisdiction over these three companies' Montana operations pursuant to Title 69, Chapter 3, MCA.

ORDER

1. NWTS and GTNW are authorized to engage in deregulated CPE activities through calendar year 1983. Thereafter, such activities will require a FSS structure. NWTS must submit a proposed accounting procedure as a prerequisite to 1983 CPE activities.

2. MBT, NWTS, and GTNW are ORDERED to file Big Six sale plans as originally set forth in Order No. 4951b and as modified herein.

3. The MBT, NWTS, and GTNW Motions for Reconsideration are GRANTED in part and DENIED in part as specified herein. Any remaining motions not ruled upon are hereby DENIED.

DONE IN OPEN SESSION at Helena, Montana, this 24th day of January, 1983 by a 4-0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISION.

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THOMAS J. SCHNEIDER, Chairman

_____
JOHN B. DRISCOLL, Commissioner

_____
HOWARD L. ELLIS, Commissioner

_____
CLYDE JARVIS, Commissioner

ATTEST:

Madeline L. Cottrill
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.48.06, ARM.